

E-filing

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. C08-0553 MMC

Plaintiff;

**APPLICATION FOR PERMISSION TO  
ENTER PLEA OF GUILTY AND ORDER  
ACCEPTING PLEA**  
(Fed. R. Crim. P., Rules 10 and 11)

v.

JOSHUA PRATCHARD,

Defendant.

The defendant represents to the Court:

1. My full true name is Josh Pratchard. I am 28 years of age. I have gone to school up to and including 5r College. My most recent occupation has been outside sales. I

request that all proceedings against me be in my true name.

2. I am represented by a lawyer; his/her name is

DAVID LARKIN

3. I received a copy of the indictment/information (as used in the Application the term indictment includes information) before being called upon to plead. I have read the indictment or a translator who speaks N/A read it to me, and I have discussed the indictment with my lawyer.

I fully understand every charge made against me. I understand these charges to

1 be:

2 ASSULT ON AN individual resulting in serious Bodily  
3 injury @ TITLE 18 USC sec. 113 (A) (6)  
4

5 4. I have told my lawyer all the facts and circumstances known to me about the  
6 charges made against me in the indictment. I believe that my lawyer is fully informed on  
7 all such matters.

8 5. I know that the Court must be satisfied that there is a factual basis for a plea of  
9 "GUILTY" before my plea can be accepted. I represent to the Court that I did the following  
10 acts in connection with the charges made against me in Counts

11 AFTER FIRST being ASSULTED by The victim

12 I kicked victim while he was on the ground  
13

14 (In the above space defendant must set out in detail in his/her own handwriting what  
15 he/she did. If more space is needed, add a separate page.)

16 6. My lawyer has counseled and advised me on the nature of each charge, all  
17 lesser included charges, all penalties and consequences of each charge, all possible  
18 defenses that I may have in this case and the constitutional rights I am waiving.

19  
20 7. I understand that my constitutional rights are as follows:

- 21 (a) the right to a speedy and public trial by jury;
- 22 (b) the right to see all of the evidence against me and to hear all  
23 witnesses called to testify against me and to have my attorney cross-  
24 examine them;
- 25 (c) the right to use the power and process of the court to compel the  
26 production of any evidence, including the attendance of any witnesses  
27 in my favor;
- 28 (d) the right to the assistance of a lawyer at all stages of the proceedings  
including trial and appeal and if I cannot afford one, to have the court  
appoint one to represent me without cost to me or based upon my  
ability to pay;
- (e) the right to remain silent or to take the witness stand at my sole option

and if I do not take the witness stand, no inference of guilt may be drawn from such failure and the jury must be so advised;

(f) the right against self-incrimination;

(g) the right to appeal from an adverse judgment;

(h) the right to appeal my sentence without any limitation contained in my plea agreement.

8. I know that I may plead "NOT GUILTY" to any offense charged against me and exercise all of my rights as listed above.

9. I know that if I plead "GUILTY" I am giving up all of the rights enumerated in paragraph 7 and that there will be no trial either before a court or jury.

10. I know that if I plead "GUILTY" the result of my plea is more than just an admission or confession of guilt and that it will result in my conviction, and that further, the court may impose the same punishment as if I had pleaded "NOT GUILTY," stood trial and been convicted by a jury.

11. My lawyer has discussed with me the maximum and minimum, if any, punishments which the law provides and the various provisions of the Sentencing Guidelines that may apply to me. I understand that the maximum punishment for the offense(s) charged in Count(s) 1 of the indictment is 10 years of imprisonment, a fine of \$ 250,000, and a period of 3 years supervised release. I understand that there is a mandatory minimum punishment of 0 years imprisonment for the offense(s) charged in Count(s) 1. I also understand that the minimum period of supervised release which the court may impose is 0 yrs (if applicable) and that if I violate any condition of supervised release the release may be revoked and I may be sentenced to all or a part of the term of supervised release imposed in addition to any other term of imprisonment which I have received.

I understand that I may be assessed the costs of confinement and/or supervision. I understand that I must pay a penalty assessment of \$100.00 per count to which I plead (or \$25.00 in the case of misdemeanor counts). I understand that I may be ordered to pay

1 restitution in an amount determined by the court.

2 I know that the sentence I will receive is solely a matter within the control of the  
3 Judge. I understand that the Judge will make no decision regarding my sentence until the  
4 Judge has read and considered the pre-sentence investigation report prepared and  
5 submitted to the court by the Probation Department.

6 I also understand that the court and counsel cannot promise what sentence or  
7 sentencing range will be set and that these calculations will depend upon the Sentencing  
8 Guidelines as they apply to me. I have been advised that the court may sentence within  
9 the guideline range determined by the Probation Department or may depart upward or  
10 downward from the range. However, no promises have been made to me as to the range  
11 or departure.

12 12. If I am on probation, supervised release or parole in this or any other court, I  
13 know that by pleading guilty here my probation, release or parole may be revoked and I  
14 may be required to serve time in that case, which may be consecutive, that is, in addition  
15 to any sentence imposed upon me in this case.

16 13. I declare that no officer or agent of any branch of government (federal, state  
17 or local) has promised or suggested that I will receive a lighter sentence, or probation, or  
18 any other form of leniency, nor have any other promises been made if I plead "GUILTY,"  
19 except as stated in the Plea Agreement I have signed, stated on the record in my entry of  
20 plea or as follows: NA

21  
22  
23 **(In the space above insert any promises or concessions made to the defendant or to his/her attorney.)**

24 If anyone else made such a promise or suggestion, except as noted in the previous  
25 sentence, I know that person had no authority to do it. No one has forced or coerced me  
26 into entering this plea. My willingness to plead guilty (does) (does not) result from prior  
27 discussions between my attorney and the government's attorney. (If it does, state any  
28 factors that influenced you that are not reflected in the plea agreement.)

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5 14. I believe that my lawyer has done all that a lawyer could do to counsel and  
6 assist me, and I am satisfied with the advice and help he/she has given me.

7 15. I know that the court will not permit anyone to plead "GUILTY" who maintains  
8 he/she is innocent and, with that in mind and because I am "GUILTY," I respectfully  
9 request the court to accept my plea of "GUILTY" and to have the clerk enter my plea of  
10 "GUILTY" as follows: to Court one of the

11 NO COMMENT  
12

13 16. My mind is clear. I am not under the influence of alcohol or drugs and I am  
14 not under a doctor's care. The only drugs, medicines or pills that I took within the past  
15 seven days are:

16 None  
17  
18

19 (If none, so state.)  
20

21 17. I OFFER MY PLEA OF "GUILTY" FREELY AND VOLUNTARILY AND OF  
22 MY OWN ACCORD AND WITH FULL UNDERSTANDING OF ALL THE MATTERS SET  
23 FORTH IN THE INDICTMENT AND IN THIS APPLICATION AND IN THE CERTIFICATE  
24 OF MY LAWYER WHICH IS ATTACHED TO THIS APPLICATION. IN OFFERING MY  
25 PLEA OF "GUILTY" I FREELY AND VOLUNTARILY WAIVE (give up) THE  
26 CONSTITUTIONAL RIGHTS GUARANTEED TO ME AS STATED IN PARAGRAPH 7  
27 ABOVE.  
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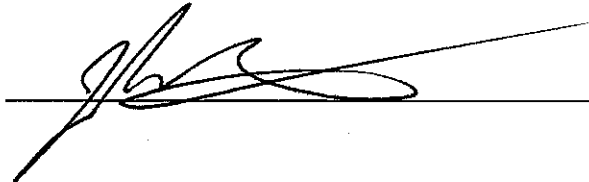
1 18. I waive the reading of the indictment in open court, and I request the court to  
2 enter my plea of "GUILTY" as set forth in Paragraph 15 of this application.

3  
4 19. I understand that all of the above statements will be made in open court  
5 under oath and that any false statements may be used against me in a prosecution for  
6 perjury or false statement which is a felony.

7  
8  
9 20. JA I am proficient enough in English to read the above and have read  
10 and fully understand it.

11 \_\_\_\_\_ I am not proficient enough in English. I speak and understand  
12 \_\_\_\_\_ which is my native language. The above was read to me in  
13 \_\_\_\_\_ and I fully understand it.

14  
15 Signed by me in open court in the presence of my attorney this 8<sup>th</sup> day of July  
16 2009  
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**INTERPRETER CERTIFICATION**

I, \_\_\_\_\_, hereby certify that I am a duly  
\_\_\_\_\_ interpreter in the English and \_\_\_\_\_  
languages and that I read all of the above to the defendant, that he/she stated he/she fully  
understood it, and I am satisfied that his/her answer is true and correct.

\_\_\_\_\_  
Interpreter's signature

\_\_\_\_\_  
Date

CERTIFICATE OF COUNSEL

The undersigned, as lawyer and counselor for the defendant Josh  
Barclay, hereby certifies:

1. I have read and fully explained to the defendant and believe he/she fully understands the allegations contained in the indictment of this case, the defenses he/she may have to each and every one of the allegations and the consequences of a plea of "GUILTY," including the pertinent Sentencing Guidelines provisions and maximum and minimum penalties.

2. I believe the defendant fully understands the constitutional rights he/she is waiving and that by entering a plea of "GUILTY" he/she is waiving each and every one of those rights.

3. Nothing has come to my attention which causes me to believe that the defendant lacks the ability to understand anything contained in the attached application or that at the time of entering his/her plea he/she is under the influence of any drug or alcohol.

4. The plea of "GUILTY" offered by the defendant in Paragraph 15 accords with my understanding of the facts he/she related to me and is consistent with my advice to the defendant.

5. In my opinion the defendant's waiver of reading of the indictment in open court as provided by Rule 10 is voluntarily and understandingly made, and I recommend to the court that the waiver be accepted by the court.

6. Defendant has read the Plea Agreement she/he signed in the matter and I believe she/he fully understands it. I certify that no promises have been made to the defendant by the government or myself other than those contained in the Plea Agreement and if there are such other promises I must state them on the record before my client and the court.

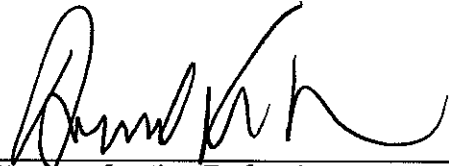
7. In my opinion the plea of "GUILTY" offered by the defendant in Paragraph 15



1 of the application is voluntarily and understandingly made. I recommend that the court  
2 accept the plea of "GUILTY."

3 Signed by me in open court in the presence of the defendant above-named and  
4 after full discussion of the contents of this certificate with the defendant this \_\_\_\_\_ day of

5 July 8, 2009

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8 Attorney for the Defendant  
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ORDER

I find that:

1. The defendant enters this plea of guilty freely and voluntarily and not out of ignorance, inadvertence, fear or coercion.

2. The defendant understands and knowingly, freely and voluntarily waives his constitutional rights.

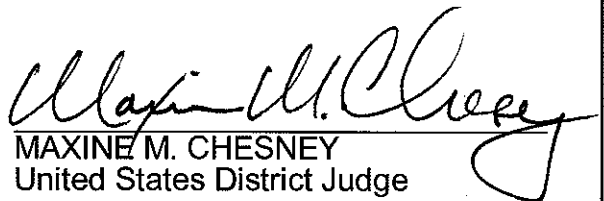
3. The defendant freely and voluntarily executed the within Application and understands its contents.

4. The defendant has admitted the essential elements of the crime charged.

IT IS THEREFORE ORDERED that the defendant's plea of "GUILTY" be accepted and entered as prayed for in the Application and as recommended in the certificate of his lawyer.

Done in open court this 8<sup>th</sup> day of July, 2009.

Dated:

  
MAXINE M. CHESNEY  
United States District Judge